

REMARKS/ARGUMENTS

Claims 1-24 stand rejected in the outstanding Official Action. Claim 1 has been amended and therefore claims 1-24 remain in this application.

The Examiner's consideration of the prior art submitted in Applicants' Information Disclosure Statement is very much appreciated.

The Examiner's consideration of the originally submitted drawings and the alleged defects noted in the "Notice of Draftsperson's Patent Drawing Review" is appreciated. Applicants enclose herewith two sheets of new formal drawings which are believed to obviate the noted objections. Entry and consideration of the newly submitted drawings is respectfully requested.

Claims 1, 3-9, 11-17 and 19-24 stand rejected under 35 USC §103 as unpatentable over Van Doren (U.S. Patent 6,085,276), Kathrow (U.S. Patent 6,393,438) and Sisodia (U.S. Application Publication No. 2003/0165128). To the extent it is understood, the Examiner apparently believes that each one of the logic elements of the program of claim 1, each of the steps of method claim 9 and each of the elements of apparatus claim 17 are shown in the cited prior art references.

As will be apparent from the following discussion, the above is not the case. Moreover, in order to combine three references, the Examiner apparently believes that there is some reason or motivation why one of ordinary skill in the art would pick and choose various bits and pieces from the cited references. However, the Examiner has

failed to set out any reason or motivation for combining references in the outstanding Official Action.

The present invention is a program, method and apparatus for dealing with unrecoverable interruptions in the wireless transmission of portions of a computer program. The program claim 1, method claim 9 and apparatus claim 17 all indicate how, during operation of a wireless communication link, portions of one or more up-to-date versions of the computer file are transferred and stored in the target data processing device. Due to the problem of frequent interruption in wireless communication links, however, the transmission and storage of a complete program often does not occur, because of breaks in the transmission prior to a complete update being downloaded.

The present invention takes the opportunity to download whatever data is available and attempts to build up a complete version of the computer files concerned. Multiple partial updates may be temporarily stored until one is completed, and at that point all partially complete older versions are discarded.

While Applicants will discuss the prior art with respect to program claim 1, it will be understood and appreciated that the same arguments are applicable to independent method claim 9 and apparatus claim 17. The program product according to claim 1 includes “link forming logic” which establishes the desired wireless communication link. The program also includes “portion determining logic” which determines if a portion of a more up-to-date version of the file is already stored within the target data processing device. “Downloading logic” operates to download the more up-to-date version of the

file “following on from any portion of said more up-to-date version of said file already stored within said store.” Finally, after a complete copy of the more up-to-date version of the file is stored, “version replacing logic” operates to replace the current version with the more up-to-date version and to discard any portions of less up-to-date versions of the file which exist.

Thus Applicants’ independent claims positively and completely define the invention which provides the benefits of the claimed invention described on page 3, lines 16-28 of the application as filed. In effect, the present system takes the opportunity when the opportunity arises to download whatever up-to-date information is available and attempts to build up a complete version of the up-to-date computer files. It stores partial updates until one update has been completed, at which point it puts that updated version into use and discards any partially complete older versions.

With respect to the cited prior art, the Examiner admits that “VanDoren does not teach the segmenting of files into portions and the use of in-range processing devices.” (Page 3, the end of section 3 of the Official Action). The Examiner’s admission is appreciated, and it is further noted that VanDoren actually teaches away from Applicants’ partial updates being transmitted and loaded. As admitted, there is no recognition of the problem of transitory connections in the wireless communication field and therefore clearly no benefit of receiving and retaining partial updates.

The Examiner also admits that “Kathrow does not teach the use of in-range processing devices” at page 4, the end of section 4 of the Official Action. While Kathrow

may teach the manipulation of computer files in a portion-by-portion manner, it does not contain any disclosure or suggestion of either the problem solved by the present invention (wireless communication interrupting an updated download prior to completion) or the speculative downloading of different portions of up-to-date versions of a file and to begin subsequent downloading “following up from any portion of said more up-to-date version of said file already stored within said store.” In fact, Kathrow appears to disclose just the opposite, since it has as an aim putting the Windows registry back to a previously more out-of-date form when that registry has been changed, rather than seeking to update other versions to delay this state.

The Examiner correctly notes that Sisodia teaches the use of in-range data processing data transmission, but is only concerned with wireless devices which can make temporary connections to other devices. There is clearly no recognition of the problem solved by Applicants’ invention in the Sisodia reference.

In view of the above, none of the VanDoren, Kathrow or Sisodia references are directed to the problem solved by Applicants’ claimed invention.

The Court of Appeals for the Federal Circuit has held in the case of *In re Rouffet*, 47 USPQ2d 1453, 1457-8 (Fed. Cir. 1998) that

"to prevent the use of hindsight based on the invention to defeat patentability of the invention, this court **requires** the examiner to show a motivation to combine the references that create the case of obviousness. In other words, **the Examiner must show reasons** that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed." (emphasis added).

Because the burden is on the Patent Office to establish how or where every aspect of each independent claim is shown or disclosed or somehow suggested in the prior art references, it is clear that the Patent Office has failed in this basic aspect of a §103 rejection.

Moreover, even if every aspect is shown in a plurality of prior art references, it is incumbent upon the Examiner to demonstrate a motivation or reason for selecting elements from the cited prior art references for combination in the manner of Applicants' claims. Again, there is no allegation by the Examiner that any prior art reference is related or even recognizes the problem solved by the presently claimed invention. Where does any of the prior art references disclose that there is a problem with the transitory nature of wireless communications or that such problem can be solved by storing partially complete versions of a more up-to-date file and adding to that file as additional portions are received until a complete file is on record, at which point earlier versions of the file are disregarded? It is simply imagination on the Examiner's part, as there is no disclosure in any prior art reference of such problem, let alone Applicants' claimed solution.

Therefore, the Patent Office has failed to establish any *prima facie* basis for rejecting claims 1, 3-9, 11-17 and 19-24 over the VanDoren/Kathrow/Sisodia combination of references.

Claims 2, 10 and 18 stand rejected under 35 USC §103 as being unpatentable over the Van/Doren/Kathrow/Sisodia combination as previously applied and further in view of

Goldick (U.S. patent 6,598,060). Inasmuch as these claims depend from claims previously addressed, the above discussion regarding the VanDoren, Kathrow and Sisodia references and their combination is herein incorporated by reference.

The Goldick reference describes a method, product and medium to store and retrieve versioning information associated with an object in a distributed environment. The presently claimed invention is not related to versioning in a distributed environment, as the “up-to-date” property is determined locally. While the Examiner admits that portions of claims 2, 10 and 18 are not taught by either VanDoren, Kathrow or Sisodia (page 8, section 12 of the Official Action), he fails to point out where or how Goldick teaches the relationships missing from these references. Moreover, there is no suggestion that Goldick contains any indication of awareness of the problem solved by the present invention, let alone the presently claimed manner of solving that problem.

For the Examiner to successfully apply a §103 rejection, it is incumbent upon him to establish how or where each claimed element is disclosed or suggested in at least one of the cited prior art references and then provide some reason or motivation for combining the references. The “reason” or “motivation” to combine references, as discussed by the Federal Circuit, must establish that one of ordinary skill in the art, confronted with the same problems as the present inventor and with no knowledge of the claimed invention, would select elements from the cited prior art references and then combine those elements in the manner of Applicants’ claims. The Examiner has simply failed to meet this test in either the rejection based upon the VanDorn/Kathrow/Sisodia

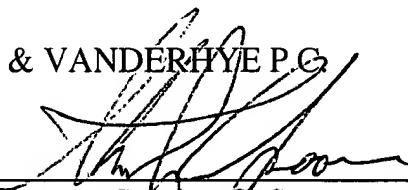
combination or the rejections based upon the VanDorn/Kathrow/Sisodia/Goldick combination of references. Therefore, the Patent Office has failed to meet its burden of proof to establish a *prima facie* case of obviousness and any further rejection thereunder is respectfully traversed.

Applicants, during review of claim 1, found a minor typographical error in claim 1 which has been corrected by the above amendment.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 1-24 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicants' undersigned representative.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 

Stanley C. Spooner

Reg. No. 27,393

SCS:kmm

1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100